

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RAFQUAT ULLAH,
DHS/BCIS/BICE No. A 73-640-325

Petitioner,

-against-

JOHN CARBONE, Acting Field Office
Director for Immigration and
Customs Enforcement ("ICE"), &
Attorney General Alberto Gonzales,
Respondent.
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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #
DATE 12/19/05

05 Civ. 4512 (LAP) (JCF)

ORDER ADOPTING
REPORT AND RECOMMENDATION

LORETTA A. PRESKA, United States District Judge:

On May 5, 2005, Petitioner filed a writ of habeas corpus against John Carbone, Acting Field Office Director for Immigration and Customs Enforcement, and Attorney General Alberto Gonzales. On May 18, 2005, I referred the case to the Honorable James C. Francis IV, Magistrate Judge. Judge Francis issued a Report and Recommendation on July 18, 2005 (the "Report"), recommending that the case be transferred to the United States Court of Appeals for the Second Circuit, pursuant to the Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005), and that enforcement of the order of removal be stayed pending final adjudication of the petition. Report at 1-2.

Petitioner filed an objection, dated July 21, 2005. The Court now denies Petitioner's objection because the objection is without merit, as it contradicts the plain language of the Real ID Act, 8 U.S.C. § 1252 (a) (5) ("a petition for review

filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this Act").

Finding Judge Francis' Report to be well-reasoned and grounded in the law, it is hereby ORDERED that the Report is adopted, and Petitioner's case is transferred to the Court of Appeals.

The Clerk of the Court shall mark this action closed and all pending motions denied as moot.

As Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253(c); see Lozada v. United States, 107 F.3d 1011, 1016-17 (2d Cir. 1997), abrogated on other grounds by United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See Cobbedge v. United States, 369 U.S. 438 (1962).

SO ORDERED

December 16, 2005


LORETTA A. PRESKA, U.S.D.J.